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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JEREMY LEONARD MAYFIELD, Defendant and Appellant.	A144478 (Sonoma County Super. Ct. No. SCR-579365)

Defendant Jeremy Leonard Mayfield admitted he violated the terms of probation imposed on him after he was convicted of felony assault. The trial court revoked probation and imposed a previously suspended prison sentence of seven years. Defendant now requests us to reverse the sentence and remand for resentencing, contending that the trial court erred in not requesting a supplemental written probation report before sentencing him to prison. Finding no prejudicial error, we affirm.

BACKGROUND

The underlying offense and sentence

We describe the facts of the underlying offense from the original probation officer's report prepared in this case in September 2011. On the early morning of February 8, 2010, defendant and a second assailant attacked another person outside of a bar in Guerneville. The victim sustained a minor brain hemorrhage, two fractures to his hip, and a broken nose. Defendant pleaded guilty to one felony count of assault with

force likely to cause great bodily injury in violation of Penal Code[1] section 245, former subdivision (a)(1).[2] He also admitted an enhancement for intentionally inflicting great bodily injury (§ 12022.7, subd. (a)).

On September 22, 2011, the trial court sentenced defendant to seven years in state prison, consisting of the four-year upper term for assault plus three years for the enhancement, but suspended execution of the sentence and placed defendant on three years of formal probation. The court stated it was "reluctantly" granting probation and warned defendant, "you're going to get one chance and the last thing anybody wants to do is have you go to prison." The terms of probation included one year in the county jail and participation in drug and alcohol rehabilitation programs. Defendant was also required to be of good conduct and obey all laws, not consume any alcohol, and not be in places where alcohol is sold.

Probation violation and admission

On September 17, 2013, the probation department notified the court in writing that defendant was in violation of probation because he had absconded. Defendant had missed a scheduled meeting with a probation officer on September 9, 2013, and had not responded to the probation officer's efforts to contact him. Defendant's probation was summarily revoked, and a bench warrant was issued.

Defendant was arrested on January 10, 2015. At a court hearing three days later, the probation officer recommended a continuance of two weeks so the probation department could "form an oral recommendation" for disposition if defendant admitted he violated probation. The probation officer stated it was "very unlikely that our recommendation would be anything but" imposition of the previously suspended prison sentence, but that the probation department wanted to speak with defendant first. The court asked defendant's counsel if she objected to "putting it over for two weeks for that

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[1] All further unspecified statutory references are to the Penal Code.

[2] Under the current version of section 245, which became effective in January 2012, assault by means of force likely to produce great bodily injury appears in subdivision (a)(4).

purpose." Defendant's counsel responded that she had no objection. After confirming January 27 as the date for the next hearing, the court told the parties, "[s]ee you back for an oral recommendation with regard to sentencing on the violation if you were to admit the violation."

On January 27, 2015, the date of the next hearing, the probation department notified the court in writing of an additional probation violation for failing to be of good conduct and obey all laws. The basis for the new alleged violation was that, according to a California Highway Patrol arrest report, defendant was involved in a single car collision on May 4, 2014, while driving under the influence of alcohol.

At the January 27 hearing, the probation officer took the position that "based on the original sentence . . ., the length of time that defendant absconded, and the indications that were made by the Court at the time of sentencing, our position at this time is should [defendant] admit any of the underlying violations that are pending at this time the recommendation would be to impose the seven-year state prison [sentence]." Defendant's counsel informed the court that defendant "would like to possibly admit today and put it over for sentencing" so that defendant could argue for probation to be reinstated. Defendant then waived his right to a hearing and admitted he was in violation of probation.[3] The court set the matter for sentencing.

Sentencing

At the sentencing hearing one month later, defendant's attorney urged the court to reinstate probation and require defendant to complete a six-month alcohol treatment program, to which defendant had already been accepted. Defendant then read a statement to the court in which he acknowledged his failure to comply with the terms of his probation, but urged the court to "believe in me and bestow upon me the opportunity and privilege to reestablish myself in good standing with the Court and successfully complete my probation." The trial court, however, imposed the previously suspended seven-year

[3] It is unclear from the record whether defendant admitted he violated his probation by absconding, by crashing while driving under the influence of alcohol, or both. On appeal, however, defendant does not contest the validity of his admission.

prison sentence and terminated defendant's probation. The court stated, "[i]t is very clear to me from the record in this file that the prison sentence that was suspended and the opportunity to not have to serve prison was a one-time opportunity. And that chance was squandered in two ways, both by failing to maintain contact with probation and abscond. I think it is clear that you were on for a three-year period of time, but worse is to pick up the DUI involving a collision after the fact and after given the opportunity with [an alcohol treatment program] previously."

Defendant timely filed this appeal.

DISCUSSION

Defendant contends the trial court erred in revoking his probation and imposing a prison sentence because it failed to request a supplemental probation report before imposing the sentence. He argues the trial court's error was prejudicial because a supplemental report would have shown defendant performed well on probation and completed two substance abuse programs and, thus, would have likely persuaded the trial court to reinstate probation.

The Attorney General argues the trial court committed no error by failing to request a supplemental probation report because defendant waived the preparation of a report by consenting to an oral recommendation from the probation department. The Attorney General argues further that any error in failing to request a report was harmless because defendant has identified no information that would have been included in the report that was not already before the court by way of evidence or argument. As such, the Attorney General asserts, "[t]here is no reasonable likelihood that an updated probation report would have influenced the sentencing court to reinstate probation rather than impose the suspended term of imprisonment in light of the court's view that [defendant] had squandered his 'one chance.' "

When probation is revoked and circumstances lead to the passage of a "significant period of time" between the original probation report and subsequent sentencing proceeding, the court must order a supplemental probation report. (Cal. Rules of Court, rule 4.411(c) ["The court must order a supplemental probation officer's report in

preparation for sentencing proceedings that occur a significant period of time after the original report was prepared"].) However, under section 1203, the preparation of a probation report or the consideration of a report by the court may be waived "by a written stipulation of the prosecuting and defense attorneys . . . or [by] an oral stipulation in open court that is made and entered upon the minutes of the court, except that a waiver shall not be allowed unless the court consents thereto." (Pen. Code, § 1203, subd. (b)(4).)

In this case, the record suggests defendant waived the preparation of a report by consenting to an oral recommendation from the probation department in lieu of a report. During the initial January 13 hearing after defendant was arrested on the probation violation, the probation officer requested a continuance of two weeks "to form an *oral recommendation*" for defendant's disposition. (Emphasis added.) The trial court then asked defendant's counsel, "[a]ny objection to putting it over for two weeks for that purpose." Defendant's counsel responded that he had no objection. After confirming a date for the next hearing, the court told the parties, "[s]ee you back for an oral recommendation with regard to sentencing on the violation if you were to admit the violation." The clerk's minutes of the hearing confirmed the matter was continued for "Oral Report VOP." Defendant did not file a reply brief contesting the Attorney General's argument that he waived the preparation of a supplemental probation report.

But even if a waiver has not been shown, and the trial court erred by not requesting a report, the error was not prejudicial. An error in failing to request a probation report implicates only California statutory law, not any federal constitutional right, so the proper test of prejudice is the standard of *People v. Watson* (1956) 46 Cal.2d 818. (See *People v. Dobbins* (2005) 127 Cal.App.4th 176, 182.) We do not reverse under the *Watson* standard "unless there is a reasonable probability of a result more favorable to defendant if not for the error." (*People v. Dobbins, supra,* at p. 182.) Defendant contends it is reasonably probable the trial court would have sentenced him differently had the court been presented with a supplemental probation report because the report would have informed the court that defendant performed well on probation and completed two substance abuse programs. Defendant, however, presented this same

information to the court in his lengthy sentencing memorandum, and also included that he had been accepted to another program. In imposing defendant's prison sentence, the court stated it reviewed defendant's "entire file," and it also received an oral update from the probation officer and heard argument from the parties. Defendant has not identified any additional information that would have been included in a supplemental report that the court had not apparently considered through these other sources. Under these circumstances, it is not reasonably probable that an updated probation report would have changed the court's mind.

Although we find no reversible error, the better practice would have been to order the preparation of a written supplemental probation report. As we explained earlier, rule 4.411 requires a trial court to order a supplemental probation report for sentencing proceedings that occur a "significant period of time" after the original report was prepared. (Cal. Rules of Court, rule 4.411(c).) A significant period of time—over three years—had passed between the preparation of the original probation report and the sentencing proceedings in this case. (See Advisory Com. com., 23 pt. 1B Supp. West's Ann. Codes, Court Rules (2016 ed.) foll. rule 4.411, p. 121 [suggesting six months is a "significant period of time"]; *People v. Dobbins, supra*, 127 Cal.App.4th at p. 181 [same].) Although the waiver of a probation report is permitted, the advisory committee notes to rule 4.411 state that waivers "are discouraged" due to the importance of probation reports to both a trial judge and prison authorities. (Advisory Com. com., 23 pt. 1B Supp. West's Ann. Codes, Court Rules (2016 ed.) foll. rule 4.411, p. 121.)

DISPOSITION

The judgment is affirmed.

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Miller, J.

We concur:

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Richman, Acting P.J.

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Stewart, J.

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